

# **Bond Case Briefs**

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## **BANKRUPTCY - WEST VIRGINIA**

### **In re Fairmont General Hospital, Inc.**

**United States Bankruptcy Court, N.D. West Virginia - February 25, 2016 - B.R. - 2016 WL 762728**

Debtor Representative/Liquidating Trustee of bankruptcy estate of debtor hospital ("Debtor") and UMB Bank, N.A., in its capacity as successor trustee with respect to \$13.7 million of hospital revenue bonds (together, the "Plaintiffs") brought adversary proceeding to avoid transfers in exercise of strong-arm and preference powers and moved for entry of summary judgment.

In order to finance the construction and operation of a new hospital the Marion County Commission ("Defendant") issued \$13,700,000 in hospital revenue bonds. In exchange, the Debtor provided the Defendant with certain security interests. In the 2007 Loan Agreement, the Debtor granted the Defendant a security interest in its Gross Revenues.

On the same day, the Defendant and WesBanco executed a Trust Indenture, which assigned to WesBanco the Defendant's security interest in Gross Revenues of the Debtor to WesBanco. WesBanco also became the Indenture Trustee through the Trust Indenture and thus undertook various fiduciary obligations to bondholders.

The Trust Indenture obliged WesBanco to properly record the security interest in the Debtor's Gross Revenues. WesBanco hired Steptoe to do so, and Steptoe filed financing paperwork in that regard with the West Virginia Secretary of State on July 16, 2007. The financing statement filed on WesBanco's behalf listed the Defendant as the borrower and WesBanco as the secured party. On May 11, 2011, Steptoe caused a continuation statement relating to the original financing statement to be filed with the West Virginia Secretary of State, again naming WesBanco as the secured party and the Defendant as the borrower. On July 17, 2013, Steptoe, on WesBanco's behalf and in an apparent attempt to correct the previous financing and continuation statements, caused a new financing statement to be filed. The new financing statement listed the Defendant as the secured party and the Debtor as the borrower.

The Plaintiffs brought this action to avoid the financing statement filed July 17, 2013, as a preferential transfer under 11 U.S.C. § 547, as the filing occurred within 90 days of Debtor's bankruptcy filing. The Plaintiffs further seek to avoid any remaining interest of the Defendant in the Debtor's Gross Revenues as an unperfected security interest avoidable by a hypothetical lien creditor under 11 U.S.C. § 544. In response, the Defendant asserted that the Defendant was not a creditor of the Debtor, thus no preferential transfer occurred.

The Bankruptcy Court held that:

- The Marion County Commission case was not proper defendant, and estate representative did not have viable preference claim against it, and
- Financing statement that failed to properly identify debtor, and that sought to perfect security interest in Gross Revenues that purported creditor did not have, having previously assigned its interest in gross revenues to another entity, was ineffective under West Virginia law, and any

interest that purported creditor had was avoidable by estate representative in exercise of strong-arm powers.